

without an interconnection agreement on the eve of testing its network.

By December 20, 1995, with no reasonable expectation that an agreement would be forthcoming, and desperately needing some form of interconnection to begin testing its network, Centennial was forced to accept the terms and conditions contained in Tariff K.⁹ Centennial made clear in person and in writing to PRTC that it would accept interconnection pursuant to Tariff K under duress, only as an interim measure, and only for testing purposes.¹⁰

6. The Interconnection Rates Proposal PRTC Delay Tactic

It was not until December 20, 1995 - seven months after Centennial requested interconnection - that Centennial finally got PRTC to attend a meeting and PRTC provided Centennial with

⁹Centennial was also concerned that it was 6 months into its construction period and PRTC's actions and inactions left little hope that PRTC would negotiate an interconnection agreement on a "co-carrier" basis. Accordingly, Centennial reluctantly agreed to interconnection pursuant to Tariff K in order to begin testing.

¹⁰There exists no basis on which PRTC should be permitted to force Centennial into accepting the interconnection arrangements negotiated with another carrier providing another service. In its August 1, 1995 document, Centennial informed PRTC in writing what it already had told them verbally - that because Centennial intends to enter into direct local exchange competition, it will pursue the full range of local exchange traffic interconnection and interexchange issues, e.g., network unbundling, number portability, mutual compensation, etc. Moreover, Centennial should no more be subjected to what another carrier is willing to accept in an interconnection agreement than it should be entitled to benefit from that carrier's negotiating strategy.

proposed interconnection rates.¹¹ PRTC tendered a bifurcated "network access" rate proposal whereby it would charge Centennial one rate per minute of use ("MOU") for PCS-to-landline calls and another rate for landline-to-PCS calls. As a threshold matter, this proposal flies in the face of "co-carrier" treatment.¹² Centennial expects to be charged for having calls made by its PCS customers terminated on PRTC's network. However, Centennial's "co-carrier" status also requires reciprocal compensation - that PRTC pay Centennial for having calls by PRTC's customers terminated on Centennial's PCS network.

PRTC has flatly rejected "co-carrier" treatment for intra-island calls. For example, PRTC has offered to implement "reciprocal compensation" but only for interstate calls. To understand the insignificance of this offer, two things must be clearly understood. First, PRTC has not even proposed interconnection rates for interstate calls. Second, the fact that Puerto Rico is an island which is more than 1,000 miles from the nearest point on the U.S. mainland means that the vast majority of calls to or from PCS phones can be expected to be intra-island in nature.

Given the distance between Puerto Rico and the U.S.

¹¹Centennial will provide the Commission with a copy of the three-page document containing PRTC's proposed PCS interconnection rates if the Commission would find it useful to review it.

¹²If PRTC's proposed rates are indeed cost-based, PRTC's costs in originating a call are more than double PRTC's costs in terminating a call. This is simply not credible.

mainland, interstate calls involving PCS phones in Puerto Rico can be reasonably expected to be a very small percentage of total calls involving PCS phones in Puerto Rico. This means that PRTC's negative interconnection policies for intra-island calls can completely undermine the Commission's efforts to launch PCS as a competitive telecommunications force in Puerto Rico. By refusing to implement "reciprocal compensation" and other aspects of true "co-carrier" treatment for intra-island calls and, as discussed below, by proposing to charge extremely high network access rates for intra-island calls, PRTC is attempting to prevent the development of PCS in Puerto Rico.

Nor has PRTC been willing to treat Centennial as a "co-carrier" with respect to the actual interconnection facilities. Centennial has been informed by PRTC that it will not allow any form of co-location at their offices. PRTC has told Centennial that Centennial has no choice but to have PRTC provide the transport to a Centennial-designated location and that PRTC will charge Centennial pursuant to NECA Tariff No. 5. As a result, Centennial would have to pay PRTC for the physical interconnection facilities. Centennial has suggested that as "co-carriers" each carrier should shoulder the costs of its own transport facilities.

PRTC responded that the interconnection with Centennial benefits relatively few of its landline subscribers, that it would be unfair to impose these costs on their entire subscriber base, and that they are therefore unwilling to shoulder the cost

of their own transport facilities. PRTC's position is that the interconnection is not equally beneficial to both sides and that therefore they will not treat the PCS carrier as an equal.

The proposed rate levels are also unconscionably high. PRTC's proposed PCS-to-landline call rate is more than 20 times higher than the average incremental cost of local usage, more than four times higher than the median interconnection rate that has been ordered or accepted by state commissions and almost twice the highest such interconnection rate.¹³ PRTC's proposed landline-to-PCS call rates are more than 46 times higher than the average incremental cost of local usage, more than nine times higher than the median interconnection rate that has been ordered or accepted by state commissions and almost four times the highest such interconnection rate.¹⁴

PRTC does propose alternative pricing for the landline-to-PCS calls but that involves PRTC charging its own landline customers high usage sensitive rates for calling PCS subscriber units. Although Centennial would not be charged for those calls, the use of usage sensitive rates and the high levels at which such rates are set amount to an anti-competitive tactic aimed at dissuading the landline customer from making calls to PCS subscriber units. While Centennial is sensitive to PRTC's need

¹³In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Notice of Proposed Rulemaking, CC Docket 95-185 (rel. January 11, 1996) at ¶¶61-74.

¹⁴Id.

to assign the costs it incurs in originating calls directed to PCS subscribers, there is no regulatory forum to evaluate the reasonableness of the cost identification, the cost accounting, the rate structure or the rate levels proposed by PRTC.

PRTC also proposed an outrageously high non-recurring NXX code "establishment charge" which is more than three times higher than generally experienced by cellular carriers. It simply is not believable that such a rate reflects the costs of registering Centennial's NXX code in PRTC's fully digital telephone network on an island that is only 40 miles wide by 100 miles long.

Centennial submits that in view of the high rates proposed by PRTC, the failure of PRTC to negotiate a PCS interconnection agreement in good faith by engaging in continuing delaying tactics, and the lack of a regulatory forum in Puerto Rico to resolve interconnection issues, this case presents precisely the type of situation that requires Commission involvement.¹⁵

PRTC explained at the December 20, 1995, meeting that the proposed rates were based on a cost study but did not provide a copy of the study or any other document that would be helpful in evaluating the proposed rates. It remains unclear how PRTC expected to present only the proposed rates without more, give Centennial a few minutes to review them, and then engage in any meaningful rate negotiation.

¹⁵Given the existing "regulatory void" in Puerto Rico, the Commission may not need to formally preempt in order to address the intra-island components of PCS interconnection in Puerto Rico.

In a January 3, 1996 letter, Centennial requested that PRTC provide it with a copy of the cost study upon which PRTC's proposed rates were allegedly based sufficiently in advance of the January 23 meeting in order to be able to address the rates. A copy of the cost study was not provided. PRTC responded with a letter sent to Centennial the late afternoon of the day before the morning meeting on January 23. In this letter and at the meeting itself, PRTC made clear that it was not going to provide the cost study but that, instead, Centennial should satisfy itself with a brief oral presentation to be made at the meeting by PRTC's economic consultant. Despite protests from Centennial that such a presentation would be inadequate and that Centennial did not have economic or cost consultants present to understand such matters, PRTC proceeded with the presentation which only proved Centennial's protests to be correct. For the most part, the net result of this brief presentation was to refer Centennial to PRTC's 1994 ARMIS Report - a public document on file at the Commission.¹⁶ Nonetheless, at that meeting, PRTC revealed that

¹⁶PRTC did state that if Centennial would identify the specific cost materials it wanted to review, PRTC would entertain a request for those materials. It remains Centennial's position that PRTC should provide it with whatever data and information PRTC relied upon in developing the proposed rates. It is absurd to place Centennial in a position of having to guess what data or other materials that PRTC used. Nonetheless, Centennial retained the services of an economic consultant with the aim of obtaining the cost data used by PRTC. As explained infra fn. 19, despite previously having required Centennial to specify the particular cost data that it wanted, PRTC volunteered to provide to Centennial's economic consultant all cost information associated with its proposed rates. At the same time, PRTC informed Centennial that a new cost study would be undertaken, thereby rendering the offered cost information irrelevant. In the end,

despite the claim that the proposed rates are cost-based, they reflect a **20 to 25 percent rate of return** which is self-authorized!

PRTC's rate proposal also states that interconnection facilities are available at the rates, terms and conditions stated in NECA Tariff FCC No. 5 Special Access. These facilities are not merely "available." In fact, Centennial has no choice but to use them. PRTC has expressly refused to allow Centennial's subsidiary, Lambda, to co-locate its fiber facilities at PRTC's major wire center to accomplish the physical interconnection of the PCS system. Thus, regardless of where Centennial establishes its point-of-presence, it will be required to use PRTC's access facilities to be able to connect to PRTC's major wire center.

As the Commission is aware, the "rates, terms and conditions" in NECA Tariff No. 5 are for a "bundled" offering. As a result, if Centennial wants to use the access facilities of Lambda or any other carrier instead of PRTC, it will still have to pay PRTC for the facilities that Lambda or a similar carrier will provide. In effect, and contrary to PRTC's assertions, Centennial is being required to use PRTC's access facilities for PCS interconnection unless it is willing to pay twice for the same facilities - once to Lambda who would actually provide them

even if PRTC provides the underlying data and Centennial's analysis identifies problems and/or determines that the proposed rates are not cost-based, there is no regulatory forum in Puerto Rico to arbitrate such disagreements.

and once to PRTC who would not but has bundled the costs with other facilities that it would provide. As the Commission has repeatedly recognized, these bundled offerings operate as a substantial economic barrier to competition in local exchange markets.¹⁷

Significantly, despite the fact that PRTC has refused to allow Centennial's subsidiary, Lambda, to co-locate its fiber facilities at PRTC's major wire center to accomplish the physical interconnection of the PCS system, PRTC has allowed its cellular subsidiary to co-locate its facilities at the same location, which also houses the points-of-presence of various IXCs, to accomplish the physical interconnection of its cellular system.¹⁸ This is unjust and unreasonable discrimination in blatant violation of Section 202(a) of the Act.

PRTC claims that its proposed rates are negotiable. There are two fundamental reasons why PRTC's statement is false. First, without a cost study to analyze (which PRTC has not provided to Centennial), it is not possible to determine whether PRTC's proposed rates are indeed cost-based.¹⁹ Frankly, it is

¹⁷See Ameritech Operating Companies, FCC 96-58 (released February 15, 1996) at ¶66.

¹⁸See Comments of Cellular Communications of Puerto Rico, Inc. filed on October 13, 1994 in CC Docket No. 94-54 at 3.

¹⁹In late February, PRTC finally agreed to provide the cost material that were used to develop the rates that PRTC proposed to Centennial on December 20, 1995. In making this offer, PRTC admitted that the materials would not be of any value because it was in the process of conducting a new cost study using a long run incremental cost methodology and expected to present Centennial with a new set of proposed rates in a "few" weeks.

extremely difficult to understand how PRTC can claim that its proposed rates are cost-based when those rates have a rate of return of 20-25% built-in. A rate of return as high as that used by PRTC completely undermines the benefits that are intended when a rate is to be cost-based.

How can Centennial negotiate interconnection rates when PRTC presents a set of proposed rates that it asserts are cost-based but does not provide the underlying cost materials to allow Centennial to test that assertion? If Centennial proposes lower interconnection rates (as it has), and PRTC merely responds (as it has) that its only obligation is to propose "cost-based" rates, which is what PRTC claims it has already done, but which it has totally failed to demonstrate to Centennial, the so-called negotiation is destined to go nowhere.

Second, and perhaps more importantly, in the case of the disagreements between Centennial and PRTC with respect to the interconnection rates, there is no forum to resolve the disagreement because PRTC enjoys self-regulation of its intra-island service. This is true regardless of whether PRTC provides Centennial with the cost data and information it used to develop its proposed rates. How can there be any kind of effective or balanced negotiation when one of the negotiating parties also claims to be the arbiter of any disputes? It is in PRTC's own

Thus, there will be further delay while PRTC conducts a new study. This epitomizes PRTC's continuing abuse of its market power and the disastrous impact of the lack of a regulatory forum in Puerto Rico.


best interest to drag out a negotiation until Centennial simply capitulates to PRTC's proposal and then conclude publicly that the resulting contract was the result of "good faith negotiation." Without active Commission involvement, there can be no effective negotiation.

Unfortunately, because of PRTC's tactics and failure to negotiate in good faith, Centennial is no closer to concluding a permanent interconnection agreement with PRTC today than it was on April, 1995 when it first requested PCS interconnection from PRTC.

DECLARATION

I, Robert E. Braden, do hereby declare and state under penalty of perjury as follows:

1. I am the Vice President of Network Services for Centennial Cellular Corp.
2. I have read the foregoing Comments, including the "Puerto Rico Case Study" attached as Exhibit 1. With respect to statements made in the Comments and Exhibit other than those of which official notice can be taken, the facts contained therein are true and correct to the best of my personal knowledge, information and belief.



Robert E. Braden

Date: March 4, 1996